IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. Nos. 9173 & 9015 of 2007

DATE OF DECISION: 17.09.2007

C.W.P. No. 9173 of 2007:

Gurtej Singh and others

…Petitioners

Versus

Punjab National Bank and others

…Respondents

C.W.P. No. 9015 of 2007:

Kulwant Singh

…Petitioner

Versus

Punjab National Bank and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Anand Chhibbar, Advocate,
for the petitioners.

Mr. R.S. Bhatia, Advocate,
for respondent No. 1.

Mr. Yogesh Jain, Advocate,
for respondent Nos. 3 & 4
(in C.W.P. No. 9173 of 2007)

M.M. KUMAR, J.

This order shall dispose of C.W.P. Nos. 9015 of 2007 and 9173 of 2007. However, facts are being referred from C.W.P. No. 9173 of 2007.

The petitioners have filed these petitions under Article 226 of the Constitution for quashing order dated 28.5.2007 (P-4), passed by the Debts Recovery Tribunal-II, Chandigarh (for brevity, 'the Tribunal'), confirming the sale in favour of the auction purchasers and rejected the objections filed by the petitioners. It has further been prayed that the Tribunal be directed not to hand over the possession of the property to the auction purchasers in view of the fact that matter has already been settled between the petitioners and the respondent Bank.

Brief facts of the case are that New Bank of India, which has since been merged with the Punjab National Bank-respondent No. 1 filed a civil suit bearing No. RT/88/7286 against Bhupinder Singh and others, which was decreed on 20.8.1998 in favour of the respondent Bank. Subsequently, the decree was transferred to the Tribunal and Recovery Certificate bearing R.C. No. 26 of 2003, dated 20.11.2002 was issued and recovery proceedings were initiated. It is claimed that during the years 2000-2001 the petitioners being bona fide purchaser, purchased the property from the Judgment Debtors, measuring 12 Kanals 12 Marlas after verifying the revenue record and at that time no lien was created by respondent No. 1 bank. On 23.1.2007, in pursuance of the sale notice the property which was purchased by the petitioners from the Judgment Debtors was sold in

open auction. On 22.2.2007, the petitioners filed their objections to which reply was filed by the respondent No. 1 bank. On 25.5.2007, respondent No. 1 bank settled the matter with the Legal Representatives of the Judgment Debtors who agreed to make the payment of compromise amount, last instalment of which was to be paid on 20.8.2007. On 28.5.2007, the aforementioned compromise (P-2) was placed on record before the Tribunal and request was made to keep the matter pending till final payment of the settled amount. However, on 28.5.2007, the Tribunal passed the final order confirming sale in favour of the auction purchasers and rejected the objections filed by the petitioners (P-4).

After hearing learned counsel for the parties we find that compromise has been entered into between the borrower-petitioners and the respondent bank by accepting an amount of Rs. 15 lacs. The auction purchasers whose bid was accepted on 29.5.2007 for a sum of Rs. 11 lacs would be entitled to the refund of whole amount along with interest @ 15% as laid down in Section 15(1)(a) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 and penalty @ 5% as contemplated by Rule 60(1)(b) of the Second Schedule of Income-tax Act, 1961 as interpreted by Hon'ble the Supreme Court in the case of **M/s Seth Kashi Ram Chemical (India) v. State of Haryana, AIR 1991 SC 478**. The petitioners shall pay the whole amount along with interest and penalty within a period of 30 days from today and the Recovery Officer of the Tribunal with whom the whole amount is lying, shall refund the whole amount paid by the auction purchasers at the earliest but not

later than two weeks from today. However, it is clarified that if any interest has accrued on the deposit made by the auction purchasers that shall be set off from the amount which the petitioners would be liable to pay under Section 60(1)(b) of the Income-tax Act, 1961.

The petitions stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 17, 2007
Pkapoor